

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KPM ANALYTICS NORTH AMERICA
CORPORATION,

Plaintiff.

v.

BLUE SUN SCIENTIFIC, LLC, THE
INNOVATIVE TECHNOLOGIES GROUP &
CO., LTD., ARNOLD EILERT, MICHELLE
GAJEWSKI, ROBERT GAJEWSKI,
RACHAEL GLENISTER, GREGORY
ISRAELSON, IRVIN LUCAS, AND PHILIP
OSSOWSKI,

Defendants.

Civil Action No. 21-10572-MRG

**PLAINTIFF'S PROPOSED SUPPLEMENTAL JURY INSTRUCTION
CONCERNING THE PRELIMINARY INJUNCTION**

Plaintiff, KPM Analytics North America Corporation, by and through its attorneys, proposes the following supplemental jury instruction concerning the preliminary injunction in this case (ECF Nos. 94, 120):

Yesterday, you heard certain evidence concerning the sales or lack of sales by Blue Sun/ITG. I want to tell you a piece of information that you may find helpful in evaluating that testimony.

After this case was filed in this court and pending the outcome of the case, the Court on August 23, 2021, ordered the defendants to refrain from using or disclosing KPM's trade secrets and/or confidential information, and to stop selling or offering to sell any products or services relating to either SpectraStar or Phoenix Near-Infrared analyzers to any current or former KPM customers that any of the individual defendants had worked with while they were at KPM in order to preserve the status quo pending the outcome of the case.

This instruction is based on the instruction issued by District of New Hampshire in *Tamko Roofing Prods., Inc. v. Ideal Roofing Co., Ltd.* (Nos. 01-1382, 01-2273 (D.N.H. May 16, 2000)), and

approved of by the First Circuit when the introduction of preliminary injunction evidence was unsuccessfully challenged on appeal. *See Tamko Roofing Prods., Inc. v. Ideal Roofing Co., Ltd.*, 282 F.3d 23, 39-40 (1st Cir. 2002). The instruction given in *Tamko Roofing* is reproduced in full below:

After this case was filed in this court and pending the outcome of the case, the Court on February 29, the year 2000, ordered Ideal to stop using the trademark in question in order to preserve the status quo pending the outcome of the case.

Id. at 28-29.

Date: May 9, 2023

Respectfully submitted,

/s/ Kevin R. Mosier

John T. Gutkoski (BBO# 567182)

Kevin R. Mosier (BBO# 703739)

SUNSTEIN LLP

100 High Street

Boston, MA 02110

Tel: (617) 443-9292

jgutkoski@sunsteinlaw.com

kmosier@sunsteinlaw.com

Scott R. Magee (BBO# 664067)

Paige K. Zacharakis (BBO# 699108)

MORSE, BARNES-BROWN, AND PENDLETON, P.C.

480 Totten Pond Road, 4th Floor

Waltham, MA 02451

Tel: (781) 622-5930

smagee@morse.law

pzacharakis@morse.law

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2023, a true and exact copy of the foregoing was served on all counsel of record through the Court's ECF system.

/s/ Kevin R. Mosier